



# Montgomery County Government

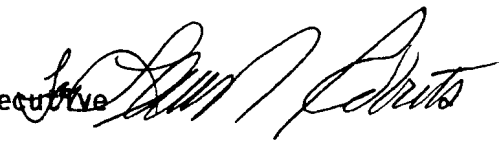
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## MEMORANDUM

May 29, 1986

TO: William E. Hanna, President  
Montgomery County Council

FROM: Charles W. Gilchrist, County Executive 

SUBJECT: County Employee Collective Bargaining Legislation  
Bill No. 19-86

This memorandum outlines my general comments regarding the County Employee Collective Bargaining Legislation, Bill No. 19-86, now before the Council. In addition, I have detailed my position on each of the amendments submitted with the legislation initially on April 22, 1986.

### INTRODUCTION

Bill No 19-86 is the result of the electorate's adoption of Section 511 of the County Charter in November, 1984. County employees have enjoyed limited rights to representation by employee organizations pursuant to the Montgomery County Employer-Employee Relations Act, commonly known as "meet & confer." However, Bill No. 19-86 establishes a comprehensive labor relations system for all County employees. I support such a program and welcome the opportunity to establish equitable conditions of employment for County employees through the collective bargaining process.

In this regard, the Bill establishes a labor relations system similar to those elsewhere, as are found, for example, in the approximately 35 states which accord collective bargaining rights to public employees, the Federal sector, pursuant to the provisions of Title VII of the Civil Service Reform Act of 1978 and, of course, in the private sector under the National Labor Relations Act.

My comments include general observations, substantive revisions to the Bill and technical corrections which seek to ensure a successful labor relations program which will protect the interests of the electorate in an efficient County government. I have sought the support of the existing employee organizations whenever possible. I urge the County Council to adopt the necessary amendments to Bill No. 19-86 and reject those amendments as I have detailed below:

COMMENTS

I. 33-102 Definitions

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6 L16 Change term "certified representative" to "certified exclusive representative"

II. 33-102(4)(Q) Definitions

8 L02 This provision excludes State Merit Employees from coverage under Bill No. 19-86. My position is that these employees' conditions of employment are substantially determined by the State. To include them within the ambit of this Bill, for the small portion of their working conditions set by the County, creates an unnecessarily cumbersome system and a significant burden on the management of County government.

III. 33-102(4)(s) Definitions

8 L10 This provision excludes County employees in grade 27 or above regardless of position, from coverage by Bill No. 19-86. The limitation operates to exclude 22 employees: five Architects at grade 27; seven Physician I's at grade 33; seven Physician II's at grade 34 and three Dentists at grade 29. These employees are top-level professional staff who occupy positions with special relationships and special circumstances to the County government due to their professional standing. Therefore, I support the Bill and they should not be included in the collective bargaining process due to the special circumstances of their employment.

IV. 33-106(a)(1) Selection, Certification and Decertification Procedures

15 L12-13 Strike the words: "Not including the names of the supporting employees" and Add: "including a copy of the signatures of the supporting employees on the petition." Only the employer is in a position to ensure that all persons who signed the petition are active employees and that the signatures on the petition are truly those of the employees. There is no reason to believe that an employee would suffer reprisal for supporting an employee organization based upon the Executive's support of this legislation and the experience pursuant to the Police Collective Bargaining Act. The Montgomery County Government Employees Organization/Local 400 has agreed to this amendment.

V. 33-106 Selection, Certification and Decertification Procedures

- 16 L27 Add the following language after the words: "... within the unit,": "...in the same manner as described in section (a)(1) above,"

Currently, the Bill provides no procedure for an intervening employee organization to petition for inclusion on the ballot except to say that the organization must show written proof of at least 10% representation of employees in the unit. This purely technical amendment would require the intervenor to meet the same petition standards of the petitioner. MCGEO/Local 400 has agreed to this amendment.

VI. 33-107(a)(7) Collective Bargaining

- 20 L4-6 This provision permits "effects" bargaining when the exercise of an employer right causes a loss of existing job(s) within the bargaining unit. The exclusive representative would negotiate with the employer in an effort to ameliorate the effects of the loss of job(s). The proposed amendments seek to expand this "effects" bargaining section. Any broader provision will significantly hamper the County in the valid exercise of management/employer rights pursuant to 33-107(b). The present language should be retained with the specific intent of the Council being thereby established that "effects" bargaining cannot limit, delay, infringe, or impair the exercise of employer rights.

VII. 33-111(a) Strikes and Lockouts

- 31 L03 Strike the period after the word "strike" and add the following: "... or condone any such activity by failing to take appropriate action to prevent or stop any strike."

This amendment places an affirmative duty upon the employee organization to join with the employer in preventing and/or stopping strike activity. The amendment is consistent with the intent of the section and reflects similar language found in the provisions of Title VII of the Civil Service Reform Act of 1978 in the Federal Sector and the provisions of many state comprehensive labor relations statutes in the public sector.

RESPONSES TO AMENDMENTS

I. Amendment #1

Subject: One Unit Instead of Two Units.

Executive's Position: Opposed

Comment:

This amendment seeks to place all County employees to be covered by the provisions of Bill 19-86 into a single bargaining unit. Such an approach to collective bargaining is unsound. Bargaining units have traditionally developed around workers with a community of interest. The County's work force is clearly and easily divided into the two units described in the Bill: Service, Labor and Trades (SLT) and Office, Professional and Technical (OPT). Such a division will facilitate the negotiations process. Moreover, under the County's "meet & confer" these units are already in place. Finally, the Government has experienced no problems or difficulties in relating to employees in this two bargaining unit model. Therefore, I request that the Council REJECT the amendment. MCGEO/Local 400 agrees with the Executive's position.

II. Amendment #2

Subject: Majority of Unit must Participate in Certification Election

Executive's Position: Opposed

Comment:

This amendment would require that over 50% of the bargaining unit vote in any certification election before it would be valid. The amendment is inconsistent with sound democratic principles. It would encourage non-participation in the selection of an employee representative. It is inconsistent with the experience in the Federal sector, private sector and public sector of labor relations. Therefore, I request that the Council REJECT the amendment. MCGEO/Local 400 agrees with the Executive's position.

III. Amendment #3

Subject: No Certification Without an Election

Executive's Position: Opposed

Comment:

This amendment would require an election of an employee organization in all cases regardless of a majority showing of interest on a petition. This amendment would incur the expense and delay of an election even when an employee organization clearly had established itself as the choice of a majority of employees for collective bargaining purposes through a

petition. Many states recognize the wastefulness of requiring any election for certification and currently provide for certification without election upon the establishment of a majority showing of interest. This is a sound and frugal model for the County to follow. I request that the Council REJECT this amendment. MCGEO/Local 400 agrees with the Executive's position.

IV. Amendment #4

Subject: No Agency Shop

Executive's Position: Opposed

Comment:

This amendment seeks to place all County employees to be covered by the provisions of Bill 19-86 into a single bargaining unit. Such an approach to collective bargaining is unsound. Bargaining units have traditionally developed around workers with a community of interest. The County's work force is clearly and easily divided into the two units described in the Bill: Service, Labor and Trades (SLT) and Office, Professional and Technical (OPT). Such a division will facilitate the negotiations process. Moreover, under the County's "meet & confer" these units are already in place. Finally, the Government has experienced no problems or difficulties in relating to employees in this two bargaining unit model. Therefore, I request that the Council REJECT the amendment. MCGEO/Local 400 agrees with the Executive's position.

V. Amendment #5

Subject: Agency Shop for Employees With Less Than 10 Years' Service

Executive's Position: Opposed

Comment:

This amendment would permit the employer and the employees' organization to negotiate over the subject of agency shop for all employees except those with more than ten years' service in the County Merit System. The comments in item IV above apply here with equal force. In addition, the amendment creates two classes of employees in relation to agency shop, imposes a record keeping requirement as to years of service upon the employer and lacks any sound, rational purpose. I request that the Council REJECT this Amendment. MCGEO/Local 400 agrees with the Executive's position.

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VI. Amendment #6

Subject: All Pensions Non-Bargainable

Executive's Position: Opposed

Comment:

This amendment would eliminate negotiations over employee pensions, leaving the matter to be determined unilaterally by the Executive and the Council. Such a limitation on a significant economic issue is inconsistent with the broad scope of bargaining found throughout the Bill. Both the employer and the employee organization benefit by broad scope bargaining. The elimination of this sort of significant economic issue from the bargaining table hampers the process. I request that the Council REJECT this Amendment. MCGEO/Local 400 agrees with the Executive's position.

VII. Amendment #7

Subject: Advisory Grievance Arbitration in all Cases Except Discipline and Discharge Cases.

Executive's Position: Opposed

Comment:

This amendment would make arbitration of all matters, except discharge and discipline, advisory unless the parties agree to binding arbitration. The experience with advisory grievance arbitration in comprehensive labor relations programs in other jurisdictions and sectors has not been good. Grievance procedures and grievance arbitrations are fundamentally dispute resolution procedures. Advisory arbitration fails to provide finality, and in those cases in which the employer fails or refuses to accept the arbitrator's advisory award, acrimony continues between the parties and further litigation usually results. From 1962 through the early 1970's, advisory arbitration was utilized in the Federal sector pursuant to Executive Order 10982 and Executive Order 11491, with unsatisfactory results. The practice was abandoned totally, and in 1975 broad scope grievance and binding arbitration became the rule pursuant to Executive Order 11491, as amended. Finally, the provision of Title VII of the Civil Service Reform Act of 1978, 5 USC section 7101, et seq made broad scope grievances and binding arbitration a statutory requirement in all collective bargaining agreements. I request that the Council REJECT this amendment. MCGEO/Local 400 agrees with the Executive's position.

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VIII Amendment #8

Subject: Broader "Effects" Bargaining  
Executive's Position: Opposed

Comment:

This amendment would greatly expand the scope of negotiations to include the subject of the effects of the exercise of a management right. The comments made in regard to 33-107(a)(7) above apply as to this amendment. The amendment would severely hamper the exercise of employer rights described in 33-107 (b). Indeed, it is foreseeable that management would be prevented from acting at all if this amendment is adopted by the Council. The employer rights listed in 33-107 (b) of the Bill are narrow, traditional and essential management rights which are crucial to the sound and efficient operation of government. The amendment would tip the delicate balance of rights between the parties, creating, at the minimum, delay in the valid exercise of management right or worse, a paralysis in the employer's ability to manage, act and govern at all. I strongly oppose this, or any other effort to further limit the ability of the employer to validly exercise a management right. I request that the Council REJECT this amendment.

IX. Amendment #9

Subject: Short First Year Bargaining  
Executive's Position: Opposed

Comment:

Upon certification of an employee organization, this amendment would require bargaining immediately over non-economic subjects only during the fiscal year in which the act, now a Bill, becomes effective.

This amendment is simply impractical due to timing of the legislative process. It is likely that the Bill will become law around the end of June, 1986. Thus, its effective date will be mid-August, 1986. Even if an employee organization were to be certified immediately, which is unlikely, short-term bargaining would not begin until mid-October, 1986. The bill provides for full-fledge bargaining to begin November 1, 1986, and each November 1, thereafter. Therefore, eliminating the need for such short term bargaining since the parties would be bargaining for a term of approximately two weeks or less. This result is not only impractical, it is wasteful. The amendment would establish a pointless obligation on the parties and require a meaningless exercise by the parties. I request that the Council REJECT this amendment.

X. Amendment #10

Subject: Right of the Union to Veto Reappointment of Labor Relations Administrator, But Not Formally Nominate Appointees.

Executive Position: Opposed

Comment:

This amendment would permit the certified employee representative to stop or "veto" the reappointment of the Labor Relations Administrator (LRA). The Bill provides for appointment of the LRA by the Executive with the advice and consent of the Council. The LRA position is a quasi-judicial neutral position which will require, in the fulfillment of the duties assigned, that the LRA administer the provisions of the statute. This charge or obligation may require that the LRA find, in his or her dispositions, against the employer or against the employee organization in matters presented and cases adjudicated. Therefore, it is unwise to permit either party "veto" power over reappointment. The Bill provides a viable and recognized appointment and confirmation procedure for the position, which is followed as a model for many other positions throughout the government. I request that the Council REJECT this amendment. MCGEO/Local 400 agrees with the Executive's position.

XI. Amendment #11

Subject: Council Participation in Nomination of Appointees

Executive's Position: Opposed

Comment:

This amendment would cause the nomination of the LRA to be a three party process involving the employee organization(s), the Chief Administrative Officer (CAO) and the Council. The appointment of the LRA pursuant to the current provisions of the Bill is accomplished by the Executive with the advice and consent, through confirmation by the Council. Thus, the Council has significant authority over the appointment through confirmation of the LRA. Excluding the Council leaves it freer to make an independent judgment on confirmation of a reappointment. Including the Council at the nomination phase unnecessarily complicates an administrative process which has been proven to be successful throughout government. I request that the Council REJECT the amendment.



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XII. Amendment #12

Subject: Continuation of State Merit System Employees in Meet and Confer.

Executive's Position: Opposed

Comment:

This amendment would continue coverage of State Merit Employees under the "meet & confer" legislation which Bill No. 19-86 is intended to replace. The comments above concerning 33-102(4)(Q), Definitions, which excludes State Merit Employees from coverage by Bill No. 19-86, apply as to the amendment. It is inconsistent with the comprehensive nature of the labor relations program established by Bill No. 19-86 to continue to include State employees under "meet & confer". As detailed above, only conflict and confusion will result. I request that the Council REJECT the amendment.

XIII. Amendment #13 (Gelman)

Subject: Short First-Year Bargaining with Limited Scope of Subjects of Bargaining.

Executive's Position: Opposed

Comment:

The amendment is essentially the same as Amendment #9, infra, except the scope of the short term first-year bargaining would be limited to specific subjects. As I detailed above in my comment on Amendment #9, this amendment is impractical due to the schedule of the legislative process. I request that the Council REJECT the amendment.

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